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TWENTIETH CENTURY FOX FILM CORPORATION

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

BAGDASARIAN PRODUCTIONS, LLC, a  
California limited liability company, and  
JANICE KARMAN, an individual,

Plaintiffs,

v.

TWENTIETH CENTURY FOX FILM  
CORPORATION, a Delaware corporation,

Defendant.

Case No. CV 10-02991 MWF (JCGx)

Referred under Cal. Code Civ. Proc.  
Section 638 to:

Hon. Carl J. West (Ret.)

JAMS Reference No. 1220044628

**CONFIDENTIAL FILED UNDER  
SEAL**

**DECLARATION OF CASONDRA K.  
RUGA IN SUPPORT DEFENDANT  
TWENTIETH CENTURY FOX FILM  
CORPORATION'S MOTION FOR  
ATTORNEYS' FEES AND COSTS**

[Filed concurrently with Notice of Motion; Memorandum of Points and Authorities; Declaration of Louis A. Karasik in support of Motion for Attorneys' Fees and Costs; Notice of Application to Tax Costs and Proposed Bill of Costs; Declaration of Casondra K. Ruga in support of Application to Tax Costs; and [Proposed] Order Granting Fox's Motion for Attorneys' Fees and Costs and Fox's Application to Tax Costs]

Filing Date:

4/21/2010

1                   DECLARATION OF CASONDRA K. RUGA

2                   I, Casondra K. Ruga, declare as follows:

3                   1. I am an attorney duly licensed to practice law before all courts of the  
4 State of California and am a senior associate with the law firm of Alston & Bird LLP  
5 (“A&B”), attorneys of record herein for Defendant Twentieth Century Fox Film  
6 Corporation (“Fox”). I make this declaration in support of Fox’s Motion for  
7 Attorneys’ Fees and Costs (“Motion”). I have personal knowledge of the facts set  
8 forth in this declaration and if called as a witness, could and would testify competently  
9 to them.

10                  2. By its Motion, Fox seeks recovery of attorneys’ fees from Plaintiffs  
11 Janice Karman (“Karman”) and Bagdasarian Productions, LLC (“BPL) based on,  
12 among other grounds, their pursuit of claims that lacked factual or legal support. In  
13 this declaration, I identify evidence produced in discovery by Plaintiffs and their  
14 representative Steve Waterman (“Waterman”) that describes Plaintiffs’ motivation for  
15 pursuing claims against Fox.

16                  3. Although Plaintiffs initiated this lawsuit in April 2010, documents  
17 produced during discovery reveal that Plaintiffs retained counsel and contemplated  
18 filing suit against Fox in early 2009 after Fox refused Plaintiffs’ demand that Fox  
19 return the merchandising rights on the films to BPL. The documents reflect that the  
20 plan to sue Fox was developed after Ross Bagdasarian, Jr. (“Bagdasarian”), President  
21 of BPL, decided that he could not “live with our present deal” in light of Fox’s refusal  
22 to renegotiate the merchandising rights. (Ex. 7.) The documents also reflect that  
23 Plaintiffs decided to sue Fox for using Karman’s materials in the picture, but  
24 threatened copyright claims only after repeatedly stating throughout 2008 and 2009  
25 that Fox should incorporate Karman’s materials in the film. I detail these documents  
26 below.

27                  4. The first Alvin and the Chipmunks picture (“*Alvin*”), released in  
28 December 2007, was a box office hit, producing domestic box office results of over

1 \$217,000,000. Over the period December 2007 through 2008, BPL began receiving  
2 profit participation payments under the parties' Agreement that ultimately  
3 documented payments to BPL of over [REDACTED]. Attached hereto as Exhibit 1 is a  
4 true and correct copy of BPL's participation statement for *Alvin* showing cumulative  
5 receipts for the period ending March 31, 2012.

6 5. Despite this income, documents produced during discovery reveal that  
7 Bagdasarian in September 2008 expressed sharp disappointment with Fox's licensing  
8 and merchandising performance on the first film. These sentiments resulted in  
9 Plaintiffs contemplating suit against Fox in early 2009. In or around September 2008,  
10 Bagdasarian requested to Fox's Chairman Tom Rothman ("Rothman") that Fox return  
11 the merchandising rights for the films to BPL. Attached hereto as Exhibit 2 is a true  
12 and correct copy of Bagdasarian's September 10, 2008 email to Waterman wherein he  
13 informs Waterman that he "proposed [to Fox] taking over the licensing on the next  
14 film." Bagdasarian's view was that merchandising revenue represented "his biggest  
15 opportunity to make real money." (Ex. 2.) Attached hereto as Exhibit 3 is a true and  
16 correct copy of Bagdasarian's proposal relating to the merchandising rights whereby  
17 BPL would receive a 25% fee plus expenses for "running the business, then profits  
18 split 50/50 with FOX." Bagdasarian complained about merchandising matters even  
19 though his Agreement with Fox was that Fox had no duty to exercise any  
20 merchandising rights at all, and any merchandising licenses with respect to an Alvin  
21 picture were in Fox's sole discretion. (Agreement, ¶9(a); ST&C, ¶18.)

22 6. During this period when Bagdasarian expressed dissatisfaction with the  
23 merchandising results and sought to renegotiate control of merchandising rights,  
24 Bagdasarian instructed Waterman to determine if there was precedent to demand more  
25 compensation for sequels, even though "it wasn't called for in the contract." A true  
26 and correct copy of this September 19, 2008 email is attached as Exhibit 19 to the  
27 Declaration of Louis A. Karasik filed in support of the Motion ("Karasik Dec.").  
28 Thereafter, in September 2008, Bagdasarian instructed Waterman to advise Fox that

1 Bagdasarian had not yet “accepted the story for the sequel.” Attached hereto as  
2 Exhibit 4 is a true and correct copy of Waterman’s September 5, 2008 email to Fox  
3 advising of Plaintiffs’ position that storyline approval was being withheld. On  
4 November 7, 2008, Rothman advised Bagdasarian that “the idea of a hand over [of  
5 merchandising rights] is a long shot, but [he] would discuss it fully from all angles.”  
6 Attached as Exhibit 5 is a true and correct copy of the November 7 email  
7 correspondence between Bagdasarian and Rothman relating to Bagdasarian’s request  
8 that Fox transfer the merchandising rights to BPL.

9       7. When Bagdasarian continued to press the matter in January 8, 2009,  
10 Rothman advised that after taking the issue to senior management at News  
11 Corporation, “the result is, as [he] suspected all along, that [Fox] [would be] unable”  
12 to give the rights back to BPL. Rothman noted that the decision to release the *Alvin*  
13 picture during the holidays in December 2007 had shortened the window for licensing  
14 and merchandising activity, but that the wisdom of that decision was borne out by the  
15 box office results and would lead to stronger merchandising performance overall for  
16 the Alvin franchise. Attached hereto as Exhibit 6 is a true and correct copy of  
17 Rothman’s email to Bagdasarian.

18       8. After Rothman sent Bagdasarian the email declining his request to return  
19 the merchandising rights to BPL, Bagdasarian advised Waterman that “without getting  
20 the licensing back, [he] could not live with [their] present deal.” Attached hereto as  
21 Exhibit 7 is a true and correct copy of Bagdasarian’s January 7, 2009 email to  
22 Waterman. He instructed Waterman to demand that Fox increase the “back-end”, or  
23 alternatively, to increase the “advance” under the Agreement from \$3 million to \$10  
24 million. (*Id.*)

25       9. On January 15, 2009, Bagdasarian emailed Rothman and informed him  
26 that he was deeply disappointed with Fox’s decision on the merchandising issue. He  
27 concluded by advising Rothman that the parties previously had shared “mutual  
28 respect”, but that “[a]ll relationships have their seminal moment. I believe this is

1 ours.” He advised that, as a result of this decision, BPL would turn its attention to  
2 addressing a “host” of “unresolved issues.” Attached hereto as Exhibit 8 is a true and  
3 correct copy of Bagdasarian’s January 15, 2009 email to Rothman.

4 10. In an email dated January 13, 2009, Bagdasarian instructed Waterman to  
5 afford Fox “a day” to respond to Plaintiffs’ demands for additional compensation, and  
6 “[i]f [Fox] [does] not value our services as we do, we will inform them that since they  
7 do not own [Karman’s purported written materials and graphic designs], they will  
8 need to start over with The Chipette designs as well as a new story and script for  
9 [their] approval.” A true and correct copy of this email is attached as Exhibit 9.

10 11. Waterman advised Fox on January 28, 2009 that the reason Bagdasarian  
11 was demanding additional compensation for Karman’s writing was in part because he  
12 felt “cheated” by Fox on the merchandising revenues and that Bagdasarian believed  
13 they were entitled to \$5 - \$10 million more than they received. Collectively attached  
14 hereto as Exhibit 10 is a true and correct copy of notes from Steve Plum (“Plum”),  
15 Fox’s Executive Vice President of Business Affairs, reflecting his discussion with  
16 Waterman and an excerpt from Plum’s May 22, 2013 deposition testimony, where he  
17 testified that Karman and Bagdasarian “felt cheated no matter what [Fox] did.” (Plum  
18 Deposition, 138:12-140:9.)

19 12. When Fox refused to give back the merchandising rights and did not  
20 immediately accede to Plaintiffs’ demands for additional compensation, Bagdasarian  
21 concluded in January 2009 that a lawsuit based on Fox’s use of Karman’s materials  
22 would compel Fox to renegotiate its Agreement: he decided that “a lawsuit from  
23 [Plaintiffs] where they are using services (of Chipette design and writing) they don’t  
24 own will ultimately bring [Fox] around.” A true and correct copy of Bagdasarian’s  
25 January 30, 2009 email on that subject is attached hereto as Exhibit 11.

26 13. As early as January 30, 2009 (Ex. 11), and then from February 2009 (Ex.  
27 12-13), to April 2009 (Ex. 14), and later in May 2009 (Ex. 15), Waterman and  
28 Bagdasarian had email communications reflecting that Plaintiffs contemplated filing

1 suit against Fox for alleged copyright infringement. In a February 12, 2009 email  
2 from Bagdasarian to Waterman, a true and correct copy of which is attached hereto as  
3 Exhibit 12, Bagdasarian advised that as “[o]nce [he and Karman] confer with an  
4 attorney who confirms [they] are legally entitled to send Fox a Cease and Desist letter  
5 from using Janice’s Chipette designs as well as her story/script materials in the film,  
6 [they] plan to do just that.” On February 12, 2009, Chris Minks (BPL’s office  
7 manager) advised Waterman that Bagdasarian “had a good conversation with  
8 [attorney Larry Shire]” who was assisting Plaintiffs in developing their claims against  
9 Fox. A true and correct copy of this email is attached hereto as Exhibit 13.

10 14. As noted below, no such Cease and Desist letter was sent – instead,  
11 Plaintiffs waited until October 2009, after the film was completed, to assert that Fox’s  
12 use of Karman’s materials in the film constituted copyright infringement. (Karasik  
13 Dec., Ex. 5.) But from February 2009 until the eve of release, Plaintiffs’ documents  
14 reflect they were actively contemplating a copyright infringement claim against Fox  
15 for using materials prepared by Karman. In an April 30, 2009 email exchange, a true  
16 and correct copy of which is attached hereto as Exhibit 14, Waterman advised  
17 Bagdasarian that they “are now entering infringement of copyright” “if and only if  
18 they use [Karman’s] material and do not have a deal.” In May 20, 2009, Waterman  
19 sent Bagdasarian an article relating to copyright litigation involving the movie “The  
20 Dukes of Hazzard” and in response to the article Bagdasarian advised that he “never  
21 hoped to follow in The Dukes of Hazzard’s footsteps, but there you have it.”  
22 Attached hereto as Exhibit 15 is a true and correct copy of the May 30, 2009 email  
23 exchange between Waterman and Bagdasarian.

24 15. Though Plaintiffs were planning a copyright claim in early 2009 (Ex. 11),  
25 Plaintiffs have pointed to no evidence that they advised Fox prior to October 2009  
26 (after photography of the film was completed) that Karman’s materials could not be  
27 used by Fox under the Agreement. Plaintiffs did not send Fox a Cease and Desist  
28 letter – a step that would have alerted Fox to Plaintiffs’ claims that use of Karman’s

1 materials in the film would result in copyright claims. Instead, throughout 2008 and  
2 Plaintiffs' documents reflect that Plaintiffs wanted Fox to include Karman's  
3 materials in *The Squeakquel*.

4 16. Plaintiffs couched their desire that Fox include the materials provided by  
5 Karman ostensibly to protect the integrity of the Alvin characters and to provide  
6 necessary emotional depth to the movie. Collectively attached as Exhibit 16 are true  
7 and correct copies of various emails produced in discovery reflecting Plaintiffs' views  
8 that the drafts of *The Squeakquel* screenplay that had been prepared by the  
9 professional writers were "trite and predictable," "young and generic," "lack[ed] the  
10 charm, personality, uniqueness and character driven story [they] were all looking for,"  
11 that another draft "ultimately robs [their] franchise of it's [sic] rich emotional  
12 heritage" and that Karman and Bagdasarian "can't understand why [Fox] disregards  
13 [their] Chipmunk expertise so often."

14 17. After months of discussions between Plum and Waterman over the period  
15 January to May 2009 resulted in no agreement to pay Plaintiffs' additional  
16 compensation, Karman's counsel Shire initiated discussions with Plum in the spring  
17 of 2009. Attached hereto as Exhibit 17 is a true and correct copy of a May 8, 2009  
18 email exchange between Waterman and Bagdasarian wherein Bagdasarian informs  
19 Waterman that Shire spoke to Plum and planned on having a second discussion with  
20 him later that day. By June 2009, principal photography of *The Squeakquel* was  
21 completed. It was not until October 2009 that Plaintiffs' counsel, Shire, sent a letter  
22 advising Fox that release of the picture containing Karman's purported contributions  
23 would result in copyright infringement claims, and identifying demands for additional  
24 compensation for the Purchase Price term, merchandising and other matters. (Karasik  
25 Dec., Ex. 5.)

26 18. On August 22, 2013, Fox took the deposition of Bagdasarian. During the  
27 deposition, Bagdasarian testified that "[s]tudios frequently co-finance pictures," that  
28 "Fox's decision to co-finance [Alvin and *The Squeakquel*] without more, is not

1 discriminatory”, and if BPL was paid according to the Agreement then “co-financing  
2 in and of itself is not the issue.” (Bagdasarian Depo. at 359:5-19.) Attached hereto as  
3 Exhibit 18 is a true and correct copy of relevant excerpts from Bagdasarian’s  
4 deposition.

5

6 I declare under penalty of perjury that the foregoing is true and correct.

7 Executed on this 6th day of June, 2014, in Los Angeles, California.

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9 /s/ Casondra K. Ruga  
10 Casondra K. Ruga

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**EXHIBIT 1 FILED UNDER SEAL**

(Pgs. 9 – 11)

## **EXHIBIT 2**

## chipmunks

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**From:**

bagdasarian@aol.com

**To:**

waterent@gmail.com

**Date:**

Wed, 10 Sep 2008 18:52:47 -0700

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Just got a call from Tom Rothman. He said that he had met with Peter Chernin and had told him of our unhappiness with the Licensing group's effort, or lack thereof on the first Alvin movie. He also told Peter that he couldn't disagree with me. He further mentioned that I had proposed taking over the licensing on the next film, and that while Peter was concerned about doing that, he didn't categorically say no. Peter asked Tom, what we would do differently.

Tom, in turn, asked me to lay out what I'd would do and how that might be different than what Fox would do.

I'm happy to put this together, but I would want to present it to Tom and Peter. Rather, than have Tom present my idea.

One of the other issues, that they aren't dealing with is the fact that the licensing group breached our agreement on several occasions. First, as you know, we didn't get the contractual style guide they were obligated to produced when the movie came out. We also know that the licensing group moved forward on several deals we never approved. I wasn't going to press these breaches as long as I got the licensing rights moving forward, but if I don't get the licensing, there is going to have to be a big payoff to make these licensing breaches go away, especially since this was my biggest opportunity to make real money (I get 37.5% of every gross licensing dollar, vs. .05% of the DVD sales).

While I had Tom on the phone, I asked if he had mad any decision about our release date. He said that he really wants December, "If we can make it." I told him that I didn't know if that was at all possible, given that we have twice as many Chipmunks and hundreds more CGI shots than the original. He said that was why he said, "If we can make it." He went on to say that "Elizabeth was working on it." I don't really know what that means. But if they are even remotely entertaining that idea, they should have Janice working on the script as soon as Jon Vitti finishes each Act. I suggested this to Karen a month ago, but when she asked Elizabeth, Elizabeth said no. My concern is that they are going to push from every side, but the things that can really help, like getting Janice involved in a major way, Elizabeth doesn't want. We went through this the first time and lost a lot of time with other writers like Don Rhymer and then Chris Viscardi and his partner, Will.

Finally, there is the whole list of problems left over from the first film: the changing of voice talent and their position that "voices" aren't a character trait so we don't have approval over them. The issue of "meetings" so that we were excluded from all of the meetings at Rhythm and Hues when character animation and personality of each scene for the Chipmunks was discussed. God only knows who they have in mind to direct, but if they are trying to make next December, we're going to be in a huge rush, and there's that provision in the contract that says we have approval, "But not if it will frustrate" getting the film done. My concern is that we're being set up where time will work against us, again.

I think this is probably a really good time to get this all out in the open. A month or so down the line, the train will be moving too quickly to change course.

PS - Greg hasn't even resolved my payment on the soundtrack. It seems like he takes a long time to resolve these issues and we've got plenty.

Ross

\*\*\*\*\*

Psssst...Have you heard the news? There's a new fashion blog, plus the latest fall trends and hair styles at StyleList.com.  
(<http://www.stylelist.com/trends?ncid=aolsty0005000000014>)

## **EXHIBIT 3**

Initial payment: \$250,000

Additional payment of \$250,000 per year that the show has not been green lit

Producer Fee: \$1.5 million for RJ  
Steve Waterman fee from FOX: \$1 million

We understand that this is Steve's entire compensation for putting the deal together. No further payments or residuals are owed.

**Theatrical and TV:** BP would receive 5% first dollar gross of revenue from  
(we'd take 2.5%)

**Video/DVD:** 40% of wholesale price (i.e. \$4 based on \$10 price)  
(we'd take 20%)

**Licensing:** BP controls and takes 25% fee + expenses for running the business, then profits split 50/50 with FOX  
(we'd take 15-20%)

We will let FOX share in merchandising in all Alvin styles excluding "Alvin & The Mini-Munks" and Infomercial/Website sales starting from the end of principal photography through 2.5 years later.

**Music:** BP controls and takes 10% fee + expenses, then profits split 50/50 with FOX  
FOX only shares in movie soundtrack, no other Chipmunk albums.

**For the Sequel:** all fees and gross participation percentages increase 100%  
Signing Bonus of \$2.5 million

## **EXHIBIT 4**

REDACTED

**From:** steve waterman [<mailto:waterent@gmail.com>]

**Sent:** Friday, September 05, 2008 5:44 PM

**To:** Greg Gelfan

**Subject:** Alvin story

Greg:

Just wanted to reaffirm that Ross has not accepted the story for the sequel. His belief is that it is seventy percent there and due to production requirements for a tentative release date he acquiesced to proceed without his approval. It is his hope that the story can be improved during the scripting stage. I believe there is agreement from Elizabeth and her team. If there is any misunderstanding of his position, please get back to me.

Thanks.

Steve

## **EXHIBIT 5**

**Microsoft Outlook**

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**From:** Tom Rothman  
**Sent:** Friday, November 07, 2008 9:36 AM  
**To:** 'Bagdasarian@aol.com'  
**Subject:** ross

ross,

i got your email and read your report as well. We need to meet with peter chernin on all of our L and M issues and quesitons, and his schedule is VERY difficult right now, so i don't know when it will be. AS i told you from the outset, the idea of a hand over is a long shot, but we will discuss it fully from all angles I assure you. Meanwhile, please continue forward helping L and M in whatever ways you can so the ball can keep (or, perhaps, start) moving. thanks. tom

## **EXHIBIT 6**

**Microsoft Outlook**

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**From:** Tom Rothman </O=FOXEG/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=TOMR>  
**Sent:** Thursday, January 08, 2009 2:38 AM  
**To:** 'Bagdasarian@aol.com'  
**Cc:** Greg Gelfan; Elizabeth Gabler  
**Subject:** alvin

dear Ross,

Greg apparently received an email from Steve Waterman saying that I am holding things up on Alvin. I certainly don't ever want to do that and do not believe I was. In any event, the issue that was in my "court" so to speak, was your request to be given back the merchandizing rights on the movie. I told you very clearly from the first time you raised this that we would look at it in good faith, but that, for many reasons, it was a deep longshot. I did indeed, as I promised, take the issue to senior News Corp management and the result is, as I suspected all along, that we are unable to do that. I am sorry to disappoint you. I was trying to think of some alternatives, but as apparently this is holding things up, it is better that we put it to rest.

Let me say, however, that we are committed to having our L and M group do as strong a job as is possible and I will be pushing them for results. I gather Steve's email also criticizes the Xmas release date. As evidenced by the results of the first picture, I believe we know what we are doing in dating. I recognize that it shortens the L and M time, but believe that we must now view L and M on the property as a year round business. Having a movie do over 200 mil (which we did at Xmas and which we do not believe can be done in the spring) we believe will make for greater L and M revenue in the end, particularly surrounding the spring DVD release of such a hit film, then a lesser gross at a later date will produce. Nothing is guaranteed in show business as you well know (and certainly no one can be sure the second film will do as well as the first), but that is our best professional assessment.

As you know, but let me say again, we prize Alvin and will always try our very best in every regard.

tom

## **EXHIBIT 7**

Gmail - Tom Rothman

<https://mail.google.com/mail/?ui=2&ik=cabce981e1&view=pt...>



steve waterman <[waterent@gmail.com](mailto:waterent@gmail.com)>

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## Tom Rothman

1 message

**Bagdasarian@aol.com <Bagdasarian@aol.com>**  
To: [waterent@gmail.com](mailto:waterent@gmail.com)

Wed, Jan 7, 2009 at 8:07 PM

Steve,

Hope you received the note from Tom that we forwarded to you. We now know that we will NOT be getting the licensing back. Therefore, we should move forward to complete the deal with Greg. As I told Tom in our meeting, without getting the licensing back, I could not live with our present deal.

We're happy to take a very modest payment for Janice's designing The Chipettes as well as her story and script work in exchange for a much bigger back end. I'm thinking \$500k for the two providing we get 10% first dollar gross. OR Fox can choose to keep our profit participation at 2 and a half %, but the advance will have to be \$10M. We are also happy to work out something in between.

My preference, and I would think Fox' also would be the very modest payment for the design and writing fees (which will not affect the budget at all) coupled with the 10% participation.

I know most of the studios are trying to reduce their up front fees in exchange for larger back ends. We, as always, are happy to bet on ourselves.

Keep me posted.

Ross

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New year...new news. Be the first to know what is making headlines. (<http://www.aol.com/?ncid=emlctaolcom00000026>)

## **EXHIBIT 8**

REDACTED

**From:** Bagdasarian@aol.com [mailto:Bagdasarian@aol.com]

**Sent:** Thursday, January 15, 2009 11:40 AM

**To:** Tom Rothman

**Subject:** Alvin 2

Dear Tom,

I cannot tell you how disappointed I am to hear your response concerning our licensing issue. While the licensing program has improved a little over the last few months, many problems still remain. For example, when I told Elie Dekel, back in October, that *Alvin and The Chipmunks* was the top selling domestic DVD of the year, he was not aware of this fact. This is symptomatic of the larger problems with the job that Fox Licensing has done with The Chipmunks and the reason I asked to take over this role.

Allow me to enumerate a few other recent examples.

I mentioned to the Licensing Group, that we expect the international box office on The Squeakuel to be significant. As a result, I have reached out to several of the Fox licensing heads in the UK, Latin American and Asia and asked, through Elie Dekel, for their "comprehensive licensing plans" for the property. Unfortunately, I have heard very little and received nothing. This international opportunity is even greater as it looks as if Fox' International Promotional Group, with my help, has landed a big promotional deal with McDonald's Europe.

Additionally, Fox' Licensing Group often makes and/or proposes deals with companies that either go out of business or don't create product. Not only was this true of licensees like Istar, Gemmy, Nanco, and the clothing retailer Steve and Barry, but it was also true of Fox' biggest licensee for the Chipmunks, the video game company, BRASH.

Brash currently owes both of us hundreds of thousands of dollars and Fox is trying to deal with the Bankruptcy Trustee to see how we can get paid. Given this problem with Fox' first video game licensee, and knowing that the Fox' current choice, Majesco, isn't much stronger, I mentioned my concerns to Gary Rosenfeld (Fox' head of New Media). I stated that I would need some very clear approvals to move forward with them. My concern is compounded by the fact that Gary has acknowledged that it takes 18 months to create a quality video game and we only have 9 months to do it. I told Gary that this time line was a REAL concern, which is why I gave him a qualified approval.

Without the conditions that I said were essential to my approval of the Majesco deal, my approval is absent. I am not willing to see my 50 year franchise devalued any further by Fox' licensing problems. I have explained to Gary that we can't afford to have another substandard video game, which could mean the end of a very lucrative category for us.

Further, I have long wanted to make a microphone that allows people to sing into it, (think Karaoke) and sound like a Chipmunk. I am free to do this deal myself, as the "Alvinizer," is not "movie related."

I have long targeted Karaoke as a good fit for The Chipmunks and a few months ago, Fox presented us with a deal with a company called, Emerson. While this company is a leader in Karaoke, they are most excited by the "Alvinizer" element, which I own independent of Fox. I told Fox Licensing, that if I were to approve of the item, I needed to make sure that the Chipmunk sound was right, otherwise they would have to eliminate the Alvinizer element and sell it as a straight Karaoke machine, as they do for all their other products.

Last week, Fox Licensing's Richard Borsini called our office and said that he could not honor our requested approval rights. He said that while we have a variety of approvals, in the event that we and Fox disagree, Fox' decisions will have to be controlling. Given some of the issues I've enumerated above, you can imagine my distress with that position.

I have done too much to assist the licensing group, to be so discounted. In just the past few months, I have called the Target folks and gotten them to consider our film, rather than Disney's Christmas release, *The Princess and The Frog*, presented Alvin 2 to Fox' International partners, McDonald's and Burger King, help shape the McDonald's Europe Happy Meal program as well as generated many of the licensing group images and important facts to help them reposition the Chipmunk licensing program.

This decision not only ignores my contributions to the licensing program, but reduces our joint ability to generate the most revenue possible. As you know, the abysmal performance of Fox' Licensing Group cost both of us millions of dollars. While this is certainly of some concern to you, it is calamitous to me, as it is, by far, my greatest potential revenue source from the movies we help create.

For the past many months, we have told Greg Gelfan and Steve Plum, through our representative Steve Waterman, that Janice's initial story, screenplay and Chipette design services, as well as our music publishing quotes would be part of a comprehensive deal. Further, we stated that licensing was an essential part of this comprehensive arrangement.

During the many months that we waited to hear back from you, Janice has been asked by Fox to rewrite the script after Jon Vitti's draft was considered "a train wreck." A few months later, Fox again asked Janice to rewrite the script after the draft from Berger and Aibel was similarly found wanting. This required Janice to work through the New Year's Holiday in order to complete the new draft upon everyone's return January fifth, which she miraculously was able to do.

Now that you have made your decision, we need to resolve a host of outstanding issues as soon as possible.

Over the past year, while we have not always agreed, I believe we have shared a mutual respect. All relationships have their seminal moment. I believe this is ours.

Ross

\*\*\*\*\*

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(<http://pr.atwola.com/promoclk/100000075x1215855013x1201028747/aol?redir=http://www.freecreditreport.com/pm/default.aspx?sc=668072%26hmpgID=62%26bcd=DecemailfooterNO62>)

## **EXHIBIT 9**

steve waterman <[waterent@gmail.com](mailto:waterent@gmail.com)>

---

## Meeting with Greg

3 messages

---

**bagdasarian@aol.com <[bagdasarian@aol.com](mailto:bagdasarian@aol.com)>**  
To: [waterent@gmail.com](mailto:waterent@gmail.com)

Tue, Jan 13, 2009 at 11:54 AM

Hi Steve,

What time today will you be having the meeting with Greg?

Thanks,  
Chris

---

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!

---

**steve waterman <[waterent@gmail.com](mailto:waterent@gmail.com)>**  
To: [bagdasarian@aol.com](mailto:bagdasarian@aol.com)

Tue, Jan 13, 2009 at 2:55 PM

Just tried you Greg is apologetic for the delay. Greg has been consumed with the WATCHMAN case. He tried to convince me that they were working on the merchandising when they received my email. I told him that I find it hard to believe that it was ever honestly his or Rothman's priority and that it was disappointing for you and should be for the division because FOX unlike Disney or NICK is not set up to brand manage their properties or their partners properties.

He discussed the areas to be negotiated and I spoke about the wrap up of all aspects which is the only method I believe we can achieve your goal. He mentioned the ask of a million dollars for the song and felt it was over reaching, I counter that \$250,000 for the song was low considering the success of the picture and an argument could be made that the song was one of the keys to the pictures success. We reviewed the design issue along with the outstanding points. I continued to direct the conversation to an all encompassing proposal.

He is going to continue to caucus with his people but I do not get the impression that the message from the division as of yet is supportive.

We might think about sitting with tom once again possibly you Janice and I. But we must have our bottom line locked before we enter that room. But first, for the good of the picture, I was thinking we might want to have a sit down with Elizabeth and get whatever frustrations she may have out in the open and she should hear the same from you. We must get them to understand and respect your value and not just give us lip service.

Lets Talk

[Quoted text hidden]

---

**Bagdasarian@aol.com <[Bagdasarian@aol.com](mailto:Bagdasarian@aol.com)>**  
To: [waterent@gmail.com](mailto:waterent@gmail.com)

Tue, Jan 13, 2009 at 6:36 PM

Steve,

Just to reiterate what you, Janice and I spoke about late this afternoon. We will give Greg a day to put his proposal together. If they do not value our services as we do, we will inform them that since

- they do not own these materials, they will need to start over with The Chipette designs as well as a new story and script for our approval.

This will facilitate a meeting with Tom, where he will need to decide whether or not he values what we bring to these projects. I would let Greg know that the ball is in their court and we do not want it to be said that we caused the delay of this film when we have worked in good faith for a year without payment.

Ross

\*\*\*\*\*

A Good Credit Score is 700 or Above. See yours in just 2 easy steps! (<http://pr.awola.com/promoclk/100000075x1215855013x1201028747/aol?redir=http://www.freecreditreport.com/pmt/default.aspx?sc=658072%26hmpg!D=62%26bcd=DecernailfooterNO62>)

## **EXHIBIT 10**

Planning

Ed. Stone Waterman ~ '66

1/28/07

SW: The problem is:

1) The Biggs feel cheated no matter what you do  
Worby must have the big edge machine.

↓ focus worry on the project

They feel they are being cheated on the form.

Entitled to \$5. \$10 more than they are  
making

OR we owe them OR we have all the rights we  
need and don't need them.

SW Pay them for something bigger.

Send them a bigger back end.

Pay the same for guys from VITI  
Get Great down.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

4 BAGDASARIAN PRODUCTIONS, )  
5 LLC, a California limited )  
liability company, and )  
6 JANICE KARMAN, an )  
individual, )  
7 Plaintiffs, )  
vs. ) No. CV102991MWF  
9 TWENTIETH CENTURY FOX FILM ) (JCGx)  
10 CORPORATION, a Delaware ) Volume I  
11 corporation, )  
12 Defendant. )

RULE 30(b)(6) VIDEOTAPED DEPOSITION OF  
TWENTIETH CENTURY FOX FILM CORPORATION  
AND IN HIS INDIVIDUAL CAPACITY:

STEPHEN PLUM

WEDNESDAY, MAY 22, 2013

21 | Reported by:

22 SHANDA GABRIEL

23 CSR No. 10094

24 Job No. 1652087

25 PAGES 1 - 225

Page 1

1 an endeavor to find a way to provide additional 14:02:42  
2 compensation to Ms. Karman for the writing services, 14:02:45  
3 at some point changed into a discussion involving 14:02:47  
4 many issues that needed to be, quote, settled for 14:02:53  
5 the picture to proceed? 14:02:58

6 A. If -- if you and I can agree that -- that 14:03:00  
7 the agreement was not specifically additional 14:03:04  
8 compensation for writing services as you've 14:03:06  
9 described it but was a writing agreement that we 14:03:09  
10 were negotiating with her, then I would agree with 14:03:11  
11 what you're saying. 14:03:13

12 Q. Well, I think you testified this morning, 14:03:14  
13 and the testimony is what it is, that you had 14:03:16  
14 discussions with your creative executives at Fox 14:03:19  
15 toward the idea of providing additional compensation 14:03:23  
16 for Ms. Karman for writing services. We may 14:03:26  
17 disagree as to the amounts and what was said and 14:03:28  
18 what was offered, but that was the point of those 14:03:31  
19 discussions, correct? 14:03:33

20 A. Well, no. 14:03:35

21 MR. KARASIK: Before you respond, 14:03:36  
22 mischaracterizes the testimony. And vague and 14:03:38  
23 ambiguous as to "writing services." And asked and 14:03:41  
24 answered. 14:03:43

25 MR. MARENBERG: Well, I'm not -- I'm just 14:03:44

1                   going to leave the testimony as it is.                   14:03:47

2                   Q.    My -- what I'm really interested in getting                   14:03:51

3                   at right now is at what point in time did it become                   14:03:53

4                   a settlement of various issues as opposed to some                   14:03:56

5                   discussion focused on writing services?                   14:04:00

6                   MR. KARASIK:   Vague and ambiguous.                   14:04:04

7                   Mischaracterizes the testimony.                   14:04:05

8                   You can answer.   14:04:07

9                   THE WITNESS:   In the absence of my -- my                   14:04:07

10                  notes in front of me, I can give you my best                   14:04:10

11                  recollection. It will not be exhaustive and the                   14:04:12

12                  order, the chronology may not be accurate.                   14:04:14

13                  There was a -- a discussion that we had, I                   14:04:18

14                  described briefly with -- with Mr. Waterman about                   14:04:21

15                  putting a writing agreement in place and what                   14:04:26

16                  that -- what payment would be associated with that                   14:04:28

17                  agreement.   14:04:30

18                  We had offered a specific amount of money,                   14:04:30

19                  \$100,000 for all writing services. We were then                   14:04:39

20                  told that the Bagdasarians were not going to respond                   14:04:41

21                  to that writing proposal until there were -- an                   14:04:46

22                  issue with regard to merchandising was resolved                   14:04:51

23                  first.   14:04:55

24                  I understand that there was -- that issue                   14:04:56

25                  was joined and their request with respect to                   14:05:00

1       merchandising was declined. And then I understand                   14:05:06  
2       that at that point -- from that point, these stack                   14:05:08  
3       of claims were presented in front of us and couched               14:05:12  
4       in terms of, if I recall this correctly, that the                   14:05:19  
5       Bagdasarians had felt cheated no matter what we did.           14:05:24  
6       It was Mr. Waterman's description. And they felt                   14:05:28  
7       that the deal that they had wasn't -- wasn't                   14:05:32  
8       sufficient and there was money left on the table and           14:05:36  
9       they -- they wanted more money.                                   14:05:38

10      BY MR. MARENBERG:   14:05:38

11           Q. Now, I want to go back to 2008, the late                   14:05:43  
12           2008, early 2009 time frame when Ms. Karman was           14:05:47  
13           delivering scripts, feature length scripts to Fox on    14:05:54  
14           The Squeakquel.    14:05:59

15           If Fox had taken those -- let me give you                   14:06:00  
16           an example. Let's go to -- take -- take a look at       14:06:08  
17           Exhibit 40. And in particular, I want to go back to   14:06:22  
18           that list of the -- of the story department,               14:06:25  
19           prepared by the story department.                            14:06:35

20           All right. And let me just direct your                   14:06:44  
21           attention to -- we'll use this as an example. Title    14:06:46  
22           number 21, which is, we can agree, title 21 on this    14:06:54  
23           report is a hundred-and-three-page undesignated     14:06:59  
24           draft screenplay from Janice Karman that was dated   14:07:03  
25           November 10, 2008?    14:07:11

x

Subject to the above changes, I certify that the transcript is true and correct.

No changes have been made. I certify that the transcript is true and correct.

No changes have been made. I certify

7/11/13  
Date

## **EXHIBIT 11**

steve waterman <[waterent@gmail.com](mailto:waterent@gmail.com)>**chipmunks**

1 message

**Bagdasarian@aol.com <[Bagdasarian@aol.com](mailto:Bagdasarian@aol.com)>**  
To: [waterent@gmail.com](mailto:waterent@gmail.com)

Fri, Jan 30, 2009 at 10:57 AM

Steve,

I've given some thought as to the type of deal we'd find acceptable for the additional services.

Design work: Fox paid Buck Lewis [REDACTED] to design the Chipmunks on the first film. This was prior to the work done at Rhythm and Hues. Janice supplied the same services prior to going to Rhythm and Hues and should be paid the same [REDACTED].

Story/Script: Jon Vitti got approximately [REDACTED] for his work that was deemed a "train wreck" and which Janice was asked to rewrite. Aibel and Berge were paid [REDACTED] for two weeks work and very little of their material was used. Again, Fox asked Janice to rewrite that draft. Finally, Chris and Will are currently working on a new draft and will be paid somewhere between [REDACTED] and [REDACTED] for their two weeks work. Given these parameters, Janice's payment for writing services should be in the neighborhood of \$500,000.

Music Publishing: We should get a minimum of \$250,000 for the Chipmunk Song.

If you add those additional fees together, it totals roughly \$1M. We're happy to defer that into a larger back end position, based on our existing definition (first dollar gross). We would also entertain a little smaller increase on our backend for this film, in exchange for a much larger increase on our backend for the 3rd film. This might be more acceptable to Fox as they're not even sure there would be a third film and it allows them to push this current obligation further into the future.

There are a lot of ways to skin this cat, and while we want to make this film, we won't allow ourselves to be bullied. Let me know when you speak to the folks at Fox. I think the prospect of their breaching their deal with The Writers Guild coupled with a lawsuit from us where they are using services (of Chipette design and writing) they don't own will ultimately bring them around.

As I say, we hate to have to do this, but if they can't agree to one of these numerous options, we will have no choice.

Meanwhile, Janice is making good headway with Betty on the script and working relationship. If the script can get worked out properly, I think we'll have another big movie.

Talk to you soon,

Ross

## **EXHIBIT 12**

steve waterman <[waterent@gmail.com](mailto:waterent@gmail.com)>**chipmunks**

1 message

**Bagdasarian@aol.com** <[Bagdasarian@aol.com](mailto:Bagdasarian@aol.com)>  
To: [waterent@gmail.com](mailto:waterent@gmail.com)

Thu, Feb 12, 2009 at 7:15 AM

Steve,

Janice and I discussed the Fox issue last night. Once we confer with an attorney who confirms that we are legally entitled to send Fox a Cease and Desist letter from using Janice's Chipette designs as well as her story/script materials in the film, we plan to do just that.

If you are available, I'd like for you to come over this morning to discuss the matter. As I said last night, the time for talk is over. We have worked for over a year on this film, often round the clock and on Christmas and New Year's Holidays to turn things around in order to meet Fox' shorten production schedule. All we have asked is to be paid the same as they have paid others for similar services. It is revealing that Tom, according to Greg and/or Steve, is now claiming to have authored the phrase, "The Squeakquel," when in fact, Janice announced this phrase to Elizabeth Gabler, Erin, Karen, myself and Jon Vitti.

Perhaps Fox wants to rewrite history and ignore our many contributions. Perhaps this is the way they can justify not paying us, as they have other third parties, for these additional services. Whatever the case, we find this unacceptable and intend to defend our legal rights vigorously.

Ross

\*\*\*\*\*

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(<http://music.aol.com/grammys?ncid=emlcntusmusi00000002>)

## **EXHIBIT 13**



steve waterman <[waterent@gmail.com](mailto:waterent@gmail.com)>

---

## Chipmunks/legal

1 message

**bagdasarian@aol.com <[bagdasarian@aol.com](mailto:bagdasarian@aol.com)>**  
To: [waterent@gmail.com](mailto:waterent@gmail.com)

Thu, Feb 12, 2009 at 3:12 PM

Hi Steve,

With regard to legal representation for our issue with FOX, Allen Grubman referred us to Larry Shire in his office. Ross had a good conversation with Larry, who will give us a call back tomorrow once he reviews the Fox agreement.

FYI, below is Larry's contact info:

Lawrence Shire  
Grubman Indursky & Shire, P.C.  
152 West 57th Street  
New York, NY 10019  
Tel: 212 554 0448 | Fax: 212 554 0444 | Email: [LShire@gispc.com](mailto:LShire@gispc.com)

Thanks,  
Chris

---

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## **EXHIBIT 14**

Gmail - writer's credit

steve waterman <[waterent@gmail.com](mailto:waterent@gmail.com)>

---

**writer's credit**

2 messages

---

**steve waterman <[waterent@gmail.com](mailto:waterent@gmail.com)>**  
To: "bagdasarian@aol.com" <[bagdasarian@aol.com](mailto:bagdasarian@aol.com)>**Thu, Apr 30, 2009 at 1:37 PM**

I just received a call from Elizabeth. After an exchange of pleasantries she informed me that she understood we are not making a deal with Janice on her writing credit. I told her I was still hopeful that we could and anticipated a positive outcome. She informed me as has Steve Plum that the studio was about to make it submission to the writers guild within five days and would not submit her as one of the writers unless we have a deal. I informed her that we would have to file a protest and put the guild and FOX on notice. Our conversation ended quickly thereafter.

The issue is much greater than just the credits at this stage. We are now entering infringement of copyright which is outside of the guild, if and only if they use Janice's material and do not have a deal.

My recommendation is to wait for Steve Plum to get back to me. I am still hopeful of a acceptable resolution without litigation which is so expensive. I believe I will receive more pressure but it makes no sense for FOX to take this arbitrary "line in the sand stance." We have an offer on the table which they still have not countered which makes her call strange.

I will update as we go. Sorry to to have this come up during your vacation.

Steve

---

**Bagdasarian@aol.com <[Bagdasarian@aol.com](mailto:Bagdasarian@aol.com)>**  
To: [waterent@gmail.com](mailto:waterent@gmail.com), [Bagdasarian@aol.com](mailto:Bagdasarian@aol.com)**Thu, Apr 30, 2009 at 2:13 PM**

Steve,

Whether this comes during the vacation is of course not an issue. This is something that has gone on for more than half a year, and I don't hold out hope that Fox is suddenly going to change course. I know you expected to have word back from them yesterday, but that didn't happen. My feeling is that we are going to have to turn this over to Alan Grubman's office in New York before there is any movement from Fox. I'll give you a call to discuss before doing that, but I see hint of movement from them.

Ross

\*\*\*\*\*  
Access 350+ FREE radio stations anytime from anywhere on the web. Get the Radio Toolbar!  
(<http://toolbar.aol.com/aolradio/download.html?ncid=emlcntusdown00000003>)

## **EXHIBIT 15**

Gmail - Janice - writing credit

Gmail

steve waterman <[waterent@gmail.com](mailto:waterent@gmail.com)>**Janice - writing credit**

3 messages

**bagdasarian@aol.com <[bagdasarian@aol.com](mailto:bagdasarian@aol.com)>**

Wed, May 20, 2009 at 11:15 AM

To: [waterent@gmail.com](mailto:waterent@gmail.com)

Hi Steve,

FYI....Just wanted to let you know that Larry Shire heard from Steve Plum today, who said that Fox will be amending their WGA filing to include Janice as a writer. According to Larry, Fox expected to have it completed by Friday (which also happens to be the deadline to protest the credits.)

Chris

---

We found the real 'Hotel California' and the 'Seinfeld' diner. What will you find? Explore [WherettsAt.com](http://WherettsAt.com).

---

**steve waterman <[waterent@gmail.com](mailto:waterent@gmail.com)>**

Wed, May 20, 2009 at 3:19 PM

To: [bagdasarian@aol.com](mailto:bagdasarian@aol.com)

They just blinked, but they still do not own the property. \*% million based on something they don't own very interesting.

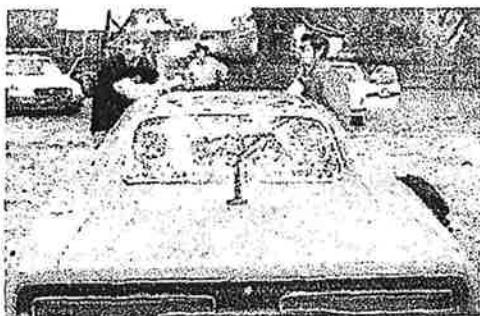
**By JOHN LIPPMAN | Staff Reporter of THE WALL STREET JOURNAL**

(See Corrections & Amplifications item below.)

For the new movie "The Dukes of Hazzard," the biggest payout didn't go to the actors or even the movie's director and producer. It went to clients of Marc Toberoff, an attorney who's made a reputation suing big studios on behalf of TV-show creators who claim they're owed money for the movie rights.

The film, which opens Aug. 5, is based on the popular 1970s-early '80s TV comedy about two Southern buddies who drive around getting into trouble and outwitting some local buffoons. It stars MTV personality Johnny Knoxville and reality-TV diva Jessica Simpson.

But before reaching the screen, the movie was tied up as a group of people who held rights related to the "Hazzard" TV show sued Warner Bros., the studio making the film. Last month, in an out-of-court settlement, the studio paid them \$17.5 million, according to people familiar with the situation. It is believed to be the largest sum ever to arise out of a case involving movie rights for a TV show.



Seann William Scott, left, and Johnny Knoxville, right, in *'The Dukes of Hazzard'*

It amounts to about one-third of the film's original budget. Mr. Toberoff, who usually takes his cases on a contingency-fee basis, declined to say how much he made from the "Hazzard" case. Warner Bros. declined to comment on any aspect of separated-rights issues.

For years, Hollywood has been besieged by lawsuits from people who claim studios stole their ideas. But those cases generally are about alleged copyright infringement.

This lawsuit involves the "separated rights" clause in the Writers Guild of America's contract with the Hollywood studios. (It also includes copyright-infringement claims.) The Writers Guild contract stipulates that the creator of a TV show retains the show's movie rights. A studio — or an independent producer — can acquire those rights separately only under narrow guidelines. Separated-rights cases deal with whether a producer has the right to make the material into a movie.

#### **Coming to the Fore**

The issue has come to the fore in recent years as studios increasingly rely on versions of popular TV shows from the 1960s and 1970s. This summer has already seen "The Honeymooners" and "Bewitched." "Miami Vice" is coming up next year, and "Father Knows Best," "The A-Team," "Magnum, P.I." and "The Man from U.N.C.L.E." are in development. It couldn't be determined whether any of those projects are facing separated-rights challenges; the Writers Guild of America says separated-rights disputes are confidential. Studios have increasingly sought safe subjects, like old hit series, because they have a track record of success and sometimes don't cost much to develop into a film script. But in some cases, the plans for saving money can backfire, and the studios have ended up paying large amounts because of litigation tied to TV-series rights.

For example, in 1999, the family of Gilbert Ralston, the creator of the 1960s TV series "The Wild, Wild West," sued Warner on a separated-rights case. (Mr. Toberoff represented them.) The studio was about to release a \$150-million-budget movie based on the TV series. The suit was settled, and Warner ended up paying the Ralston family between \$600,000 and \$1.5 million, people involved in the case say. (The film was a disappointment at the box office.)

In the 1960s and 1970s, creators of series often sold certain TV rights to networks. But because big studios weren't generally in the market for making movies of these shows at that time, studios didn't always try to buy the movie rights. As a result, they must now go back and acquire them from the creators or their heirs — or risk being sued. "Since the whole idea of making a movie out of a TV series was highly speculative, by and large producers and studios didn't bother to acquire the separated rights," says attorney William Grantham. He represented United Artists a few years back when the studio wanted to turn the 1960s TV series "Rat Patrol" into a movie. The Writers Guild arbitrated issues involving those rights, though the movie hasn't been made.

In the case of "Hazzard," the TV series itself was based on a 1975 United Artists movie, "Moonrunners." Producer Bob Clark acquired a script by Gy Waldron, which Mr. Waldron also directed. In 1978, Warner Bros. acquired the rights to make "Moonrunners" into the "Hazzard" TV series. But according to Mr. Clark's lawsuit, the studio never acquired the movie rights. (Mr. Clark claimed copyright issues in the lawsuit, filed in Los Angeles Superior Court last February: specifically, that the "Hazzard" movie appears to rely to a large extent on "Moonrunners." The lawsuit details 25 points in the "Hazzard" movie, from plot to characters, in which the two movies possess "glaring and substantial similarities.")

On the basis of Mr. Clark's claims, the judge issued a preliminary injunction ordering Warner to withdraw marketing materials and postpone release of the movie until the parties could settle. A big delay would have been a serious setback for the studio, since the movie cost about \$53 million to make, was a major summer entry for Warner and had been widely publicized. The studio had also started rolling out its estimated \$30 million advertising campaign. Within days of the judge's ruling, Warner lawyers holed up in a conference room at Mr. Toberoff's offices, and agreed to pay Mr. Clark and his partners. A settlement was reached June 21.

#### 'A Market to Be Tapped'

Mr. Toberoff, who says he's never lost a case, estimates he's handled rights issues related to 10 shows on behalf of their creators when producers wanted to make them into movies. The lawyer says most of the issues involved "cleaning up" the separated rights of the shows." In only three cases, he says, has he gone to court. (Other disputes are arbitrated by the Writers Guild.)

After winning one settlement, "he was selling himself as an expert," says Grace Reiner, assistant executive director at the Writers Guild, who works on the arbitration of disputes over separated rights. "He saw a market to be tapped, and he tapped it," she says. Regarding his work representing TV-show rights holders, Mr. Toberoff says, "People call me an 'ambulance chaser.' But I don't take on a case unless I believe in it."

Mr. Toberoff first got into the field of TV-series rights by way of the son of Robert Pirosh, the creator of the 1960s TV series "Combat." While on the treadmill at his health club in 1994, Mr. Toberoff read an ad, placed by the son, seeking help in sorting through his father's papers. Mr. Toberoff researched what rights had, and hadn't, been sold. When it was announced a couple of weeks later that Bruce Willis was going to star in a movie version of "Combat," Mr. Toberoff was ready to press a claim the producer did not have the movie rights to the old TV series. Mr. Toberoff says a settlement was reached, though he won't say for how much. (That movie was never made.)

Meanwhile, Mr. Toberoff has pursued another line of work: producing. His Intellectual Properties Worldwide has acquired remake rights to classics like "High Sierra" and "The Asphalt Jungle," as well as such old TV shows as "Ironside," "Police Woman," "Hart to Hart" and "F-Troop." This could theoretically put him in a delicate position, since he is representing TV-show creators suing studios, while his production company seeks the cooperation of studios that's required to fund and distribute Hollywood films. Mr. Toberoff says he is aware of this potential conflict and "keeps a defined firewall between producing and legal matters."

[Quoted text hidden]

Bagdasarian@aol.com <Bagdasarian@aol.com>  
To: watrent@gmail.com

Thu, May 21, 2009 at 8:09 AM

Right you are. I never hoped to follow in The Dukes of Hazzard's footsteps, but there you have it.

Ross

\*\*\*\*\*

**Recession-proof vacation ideas. Find free things to do in the U.S. (<http://travel.aol.com/travel-ideas/domestic/national-tourism-week?ncid=emlcntusstrav00000002>)**

## **EXHIBIT 16**

## Re: chipmunks

---

**From:**

steve waterman <waterent@gmail.com>

**To:**

bagdasarian@aol.com

**Date:**

Sat, 06 Sep 2008 13:16:34 -0700

---

Story and writing credit will be a guild decision not FOX.

Do you want me to go after the writing monies at this moment?

Your going to have to give me some support materials and a range

I have only a vague idea of the amount of work and time. Is it ten or hundreds of hours. As I mention Jan happened to tell me that Janice could not attend some dinner because she was locked away all weekend. I just need to come in armed with facts I don't want to under estimate the effort. Thanks

On Fri, Sep 5, 2008 at 6:17 PM, <[Bagdasarian@aol.com](mailto:Bagdasarian@aol.com)> wrote:

Steve,

I spoke to Janice about your conversation with Karen. First, we want to make sure that Janice gets paid and receives her story credit. As far as writing on the script, it's much more effective, if Jon can't deliver the right script, Janice wants a few weeks to fix the script ALONE. This will be the most effective way to work.

Thanks,

Ross

\*\*\*\*\*  
Psssst...Have you heard the news? There's a new fashion blog, plus the latest fall trends and hair styles at StyleList.com.  
(<http://www.stylelist.com/trends?ncid=aolsty00050000000014>)

## chipmunks

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**From:**

bagdasarian@aol.com

**To:**

waterent@gmail.com

**Date:**

Wed, 10 Sep 2008 18:52:47 -0700

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Just got a call from Tom Rothman. He said that he had met with Peter Chernin and had told him of our unhappiness with the Licensing group's effort, or lack thereof on the first Alvin movie. He also told Peter that he couldn't disagree with me. He further mentioned that I had proposed taking over the licensing on the next film, and that while Peter was concerned about doing that, he didn't categorically say no. Peter asked Tom, what we would do differently.

Tom, in turn, asked me to lay out what I'd would do and how that might be different than what Fox would do.

I'm happy to put this together, but I would want to present it to Tom and Peter. Rather, than have Tom present my idea.

One of the other issues, that they aren't dealing with is the fact that the licensing group breached our agreement on several occasions. First, as you know, we didn't get the contractual style guide they were obligated to produced when the movie came out. We also know that the licensing group moved forward on several deals we never approved. I wasn't going to press these breaches as long as I got the licensing rights moving forward, but if I don't get the licensing, there is going to have to be a big payoff to make these licensing breaches go away, especially since this was my biggest opportunity to make real money (I get 37.5% of every gross licensing dollar, vs. .05% of the DVD sales).

While I had Tom on the phone, I asked if he had mad any decision about our release date. He said that he really wants December, "If we can make it." I told him that I didn't know if that was at all possible, given that we have twice as many Chipmunks and hundreds more CGI shots than the original. He said that was why he said, "If we can make it." He went on to say that "Elizabeth was working on it." I don't really know what that means. But if they are even remotely entertaining that idea, they should have Janice working on the script as soon as Jon Vitti finishes each Act. I suggested this to Karen a month ago, but when she asked Elizabeth, Elizabeth said no. My concern is that they are going to push from every side, but the things that can really help, like getting Janice involved in a major way, Elizabeth doesn't want. We went through this the first time and lost a lot of time with other writers like Don Rhymer and then Chris Viscardi and his partner, Will.

Finally, there is the whole list of problems left over from the first film: the changing of voice talent and their position that "voices" aren't a character trait so we don't have approval over them. The issue of "meetings" so that we were excluded from all of the meetings at Rhythm and Hues when character animation and personality of each scene for the Chipmunks was discussed. God only knows who they have in mind to direct, but if they are trying to make next December, we're going to be in a huge rush, and there's that provision in the contract that says we have approval, "But not if it will frustrate" getting the film done. My concern is that we're being set up where time will work against us, again.

I think this is probably a really good time to get this all out in the open. A month or so down the line, the train will be moving too quickly to change course.

PS - Greg hasn't even resolved my payment on the soundtrack. It seems like he takes a long time to resolve these issues and we've got plenty.

Ross

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(<http://www.stylelist.com/trends?ncid=aolsty0005000000014>)

Subj: Re: alvin 2  
Date: Monday, December 22, 2008 10:25:23 AM  
From:  
To: betty.thomas@fox.com, krosenfelt@roadrunner.com

Rather than send notes, given our time crunch, I just reworked the first 32 pages (See attached). Now I think we have the personality we were missing. Let me know your thoughts. My hope is that the guys won't need to do much at all to these pages and can just move forward.

I haven't gotten to the soccer scene, but if it's going to work, it needs to reveal something about Alvin's personality, which it currently doesn't really do.

We can be reached at (805) 969-3349 or 969-5523. I'm here until about 1:00 after which I have an appointment in LA.

Janice

## Re: Alvin 2

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**From:**

krosenfelt@roadrunner.com

**To:**

Ross Bagdasarian <bagdasarian@aol.com>, Betty Thomas <queenbub@aol.com>

**Date:**

Sat, 27 Dec 2008 21:18:21 -0800

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I have not read yet... Will tommorow...

Sent via BlackBerry by AT&T

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**From:** Bagdasarian@aol.com

**Date:** Sun, 28 Dec 2008 00:15:10 EST

**To:** <krosenfelt@roadrunner.com>; <QueenBUB@aol.com>

**Subject:** Alvin 2

I don't know if you've had a chance to read the boys draft, but after the first twenty pages it becomes young, trite and generic. Brittany is exactly what we said we didn't want her to be: Bitchy and unlikeable. Additionally, this has become a story we said at the outset we'd never do: The Chipmunks vs. The Chipettes. It lacks the charm, personality, uniqueness and character driven story we are all looking for. Even the scene with Dave at the end, is frighteningly trite.

Ross

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## Re: Alvin 2

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**From:**

krosenfelt@roadrunner.com

**To:**

Ross Bagdasarian <bagdasarian@aol.com>

**Date:**

Sun, 28 Dec 2008 09:08:15 -0800

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How sweet about your "date" at your home away from home. Have a really nice time...

We can speak tommorow. My home computer is down and it printed out half. I will go to the office shortly and read. Obviously, I will be around tommorow. I have not heard from Betty.

Sent via BlackBerry by AT&T

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**From:** Bagdasarian@aol.com  
**Date:** Sun, 28 Dec 2008 11:54:32 EST  
**To:** <krosenfelt@roadrunner.com>  
**Subject:** Re: Alvin 2

I'm taking Janice to the Peninsula for a "date."

One last point on your question about structure. The story structure here is The Chipmunks vs. Chipettes. It's a story we've done for Saturday morning too many times to want to redo it badly as our follow up to last year's blockbuster. This isn't a story that takes the audience anywhere it hasn't been many, many times before. It is trite and predictable as well as being heavy handed in its thin moral teaching.

The success of our first movie was based on character, personality and some fun musical moments. All three are largely absent here. Nothing is hard won. Everything comes too easily and without emotional consequence.

This is a story we are not remotely interested in making.

Ross

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steve waterman <waterent@gmail.com>

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**alvin 2**

1 message

**Bagdasarian@aol.com <Bagdasarian@aol.com>**  
To: waterent@gmail.com

Sun, Jan 18, 2009 at 3:46 PM

FYI - Betty needed to cut the script down to length. She revised it to 79 pages and added some action set pieces, but in the transition, we lost some of the specific Chipmunk/Chipette personality and emotional weight. We received Betty's draft late Thursday evening. Janice finished her new revision today. I think it has everything we want and is even a page shorter at 78 pages.

Ross

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REDACTED

-----Original Message-----

From: [krosenfelt@roadrunner.com](mailto:krosenfelt@roadrunner.com) [mailto:[krosenfelt@roadrunner.com](mailto:krosenfelt@roadrunner.com)]  
Sent: Thu 1/22/2009 10:05 AM  
To: Elizabeth Gabler; Erin Siminoff  
Subject: Fw: alvin 2 script

I had a long talk with Ross and yet again reiterated that we all agree with the character emotion and the need for an impactful breakup and reconciliation. I went further to say there is usually more than one way to achieve this in storytelling... We are setting out to make the best film possible and no one disregards them...

Sent via BlackBerry by AT&T

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From: [Bagdasarian@aol.com](mailto:Bagdasarian@aol.com)  
Date: Thu, 22 Jan 2009 12:00:17 EST  
To: <[krosenfelt@adelphia.net](mailto:krosenfelt@adelphia.net)>  
Subject: alvin 2 script

Karen,

Janice and I are concerned with Elizabeth's comment about "keep Betty's template, but add the chipmunk personality." As we mentioned yesterday, the second half of Betty's draft is not only missing our unique personality, it is also devoid of any real emotional consequences. There's nothing really at stake. The brothers break up too easily and they get back together too easily. Alvin and Simon exchange a meaningless few words and are now all good. Theodore only needs to see a moment of Meerkat Manor on TV to return to his "family." You and Elizabeth know well that winning back someone's trust must be HARD WON in order to have weight. This cannot be accomplished in Betty's template. It's too trite, too generic, and ultimately robs our franchise of it's rich emotional heritage.

I believe if Elizabeth take a closer look at the second half of Betty's draft, she will come to the same conclusion. She would never have accepted such an inconsequential second half for Marley and Me, she shouldn't do it with what is the follow up to Fox 2000's biggest hit ever. The audience came in huge numbers to our first film, not because of "planes, trains and automobiles," but because they felt an emotional connection to the characters. That is vacant in the second half of Betty's draft.

Janice and I can't understand why Elizabeth disregards our Chipmunk expertise so often.

Let's talk about the most successful way to get this message to her.

Thanks,

Ross

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alvin 2

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**From:**

bagdasarian@aol.com

**To:**

krosenfelt@roadrunner.com

**Date:**

Fri, 23 Jan 2009 22:26:18 -0800

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Karen,

I finished Betty's draft. Unfortunately, at the halfway mark, it becomes trite, generic and preachy. It is devoid of real emotion. And as I feared, you can't fit the personality and emotion needed into her second half template. This script would kill our franchise. We will not make this movie.

Get a good night sleep. Let's talk in the morning.

Ross

BP00033087

## alvin 2 script

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**From:**

bagdasarian@aol.com

**To:**

krosenfelt@roadrunner.com

**Date:**

Sat, 24 Jan 2009 13:38:47 -0800

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Karen,

Let me know when you've read Betty's draft. Janice just finished it and is extremely debilitated. We have been incredibly accommodating and Janice has turned herself inside out trying to infuse this film with The Chipmunk/Chipette personality and heart. In spite of her many, many efforts, we have this draft that is riddled with trite, cliche, generic characters as well as action set pieces we can't afford. Alvin and Brittany are brats, Theodore has lost his charm and Simon doesn't really exist.

This is too late in the day, to still be in this place. We pride ourselves in being reliable, hardworking professionals, but even we can no longer work like this.

Ross

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(<http://pr.atwola.com/promoclk/100000075x1215855013x1201028747/aol?redir=http://www.freecreditreport.com/pr/default.aspx?sc=668072%26hmpgID=62%26bcd=DecemailfooterNO62>)

## Re: chipmunks

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**From:**

steve waterman <waterent@gmail.com>

**To:**

bagdasarian@aol.com

**Date:**

Thu, 29 Jan 2009 00:55:14 -0800

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You might consider less emphasis on the relationship with the exception that without full transparency and communications the character of the chipmunks historically have become inconsistent, unacceptable and damaging to the franchise which is something you are attempting to prevent. Secondly, the contract provides for complete access to all aspects of production for the purpose of protecting your franchise.

Equally of importance is the fact that this last draft is not an acceptable storyline. You did not and have never approved the storyline which is one of the most important reasons why there has been the ongoing problems with the various drafts and caused for FOX to employ Janice as a writer.

Lets talk in the morning

On Wed, Jan 28, 2009 at 10:40 PM, <[Bagdasarian@aol.com](mailto:Bagdasarian@aol.com)> wrote:

Steve,

Below is a note that I wanted to send to Elizabeth, Karen and Betty. Give me your thoughts.

Ladies,

I'm afraid that the nature of our relationship on this film was misunderstood today as we were treated as rights holders rather than as partners. People to be held at arms length, rather than welcomed into a collaborative process.

The past thirty years, Janice and I have guided this franchise to successes in television, music and licensing. We have three generations of Chipmunk fans number around the world representing hundreds of millions of people around the world. We guard this franchise very carefully, as it is our sole means of support. If a film doesn't represent them properly, our franchise is destroyed. Conversely, Fox will put another 15 films out the following year and Betty will direct something else.

We have always been incredibly clear as to how we work. Janice and I have said from the outset, both to Elizabeth, when she came to our home some six years ago to convince us to come to Fox, "Don't marry us unless you are prepared to have us in EVERY moment of this production." Likewise, we and Karen told Betty in our initial meeting, that we are a part of everything that happens with these films. EVERYTHING. We explained how we worked from voice coach to colors on walls, everything that involves our characters involves us. We do this, not because we can't think of anything else to do, but because our paramount concern is to the characters we own. The vehicle must be true to the uniqueness of who they are and what they do.

Elizabeth, whether intended or not, treated Janice today as someone who indiscriminately kept turning out draft after draft. Janice's first and only concern is making sure that The Chipmunks and Chipettes are represented properly, that the emotion is real and that there is nothing generic or trite in what they do. Janice was asked to rewrite the first draft in September when Jon Vitti's draft was deemed to be unusable. Janice was again asked to rewrite over New Years when Aibel and his partner so missed the mark.

A few weeks later, when Betty needed to cut the script down 20 pages, I think we all acknowledged that a lot of personality and real emotion was lost. The characters had become competitive and mean spirited. The film had also become The Chipmunks versus The Chipettes, which was a film we said from the start, we were not interested in making. We told Betty that this didn't represent our characters and she told Janice, "You'll fix it."

Knowing that principal photography was going to begin in four weeks, Janice worked round the clock and turned around a revised draft in a few days (January 20th). This retained Betty's shortened page count and action set pieces, but added real Chipmunk/Chipette personality with emotional weight.

When Betty presented a new draft late last Friday, many of the same problems existed. Conscious of the waning time, Janice again incorporated the unique chipmunk personality and real emotion into this draft and completed it over the weekend. Interestingly, this was the draft that Chris and Will seemed to be working from in their comments today.

I don't know how our new writers are going to capture the chipmunk/chipette personality if Janice is required to simply give notes. We worked with Chris and Will on the first film. They had some good ideas, but their dialog often tended to be somewhat generic and a little cliche. Furthermore, they didn't have a great sense of The Chipmunks and I suspect that will be even more true of The Chipettes. On the first film, because they were working while we were also shooting, Janice often rewrote their scenes and I would go over to Chris' at night and dictate the changes to him. Whether Janice received credit or payment on the first film, more than 40% of that picture was written by her.

While Janice and I respect Betty's role as director, I think it is terribly inefficient for her to work alone with Chris and Will at this late juncture. Janice's sole intention was to expedite the process, incorporate everyone's notes and get a story we could approve for our characters. I think we all agree that the January 15th draft is not yet a story we can approve. We hope it will be soon.

Ross

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## Microsoft Outlook

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**From:** Bagdasarian@aol.com  
**Sent:** Sunday, February 08, 2009 10:08 PM  
**To:** Betty Thomas; krosenfelt@roadrunner.com  
**Subject:** R & J notes on Alvin 2 first 65 pages

Hey guys,

In an attempt to get a jump on tomorrow's meeting. We've enclosed our notes on yesterday's draft.

Our general note is that these last 44 pages have lost all the Chipmunk/Chipette personality. While this template may attempt to streamline the story, there is no emotional attachment to anyone. Even Toby stands for very little at the end. At least when he had a fear of being on the stage, he had to overcome that to save The Chipmunks at the end. Similarly, the last 40 pages, Alvin is an egotistical jerk, Simon is a one dimensional nag and Theodore is a whiner. The Chipettes are no one in particular and vacillate between being hateful and helpful for no apparent reason. Finally, Dave has no scene of consequence after page 17.

Having said that, it can all be fixed. Our specific comments are as follows:

Pg. 12 - It's too cliché and unlikeable for Brittany to say, "...We're going to be stars." After she says, "We finally made it. Los Angeles..." have her say something like, "Our chance to sing for the world." That sounds hopeful, without being as cliché. Especially since she's going to talk about being a "star" again on page 22.

Pg. 14 - General Toby note. Currently, Toby is a video game player, but there's no pay off to this. When he had given up playing guitar, because of his fear of being on stage, and then had to overcome this at the end to help the Chipmunks, at least he had some mini arc. If he's going to be a video game person, which perhaps keeps him insulated from any real contact with real people, then we should see the payoff for that. Perhaps the iChat scene later with The Chipmunks could set Toby up with his first real date...Julie. This is full of Chipmunk specific personality and does not require a new location.

Pg. 19 - The Chipmunks can smile sweetly, but please eliminate the "expecting to be recognized." Again, it makes them sound a little egotistical. It's a minor descriptive difference, but will inform the animators as to the Chipmunks intention.

Pg. 25 - Minor dialog note for Ian. We preferred the earlier Jon Vitti dialog, "...Chipmunks who can sing? **Tired**. But girl chipmunks who can sing? **Fasten your seat belts**." The current version, changes Jon's original two words (bolded above) to "Snore" and "boom."

Pg. 28 - There's a wonderful opportunity for a real Chipmunk moment, just before Ryan and Xander, slink past the Chipmunks. Start the scene with just the Chipmunks, where Theodore can look to Simon and say, "**If I pull my hoodie down, does it make me look thinner?**" This will let the audience know that Theodore is humiliated by what they've done to him. And Simon could respond kindly, "**You look good, Theodore. Those guys are just jerks.**" Then, when Ryan and Xander try to slink past the Chipmunks, it makes even more sense for Alvin to bare his teeth at them and growl. It's a small addition that adds the emotional sting of being called fat as well as another example of the Chipmunk brothers sticking up for each other. This is the type of Chipmunk moment that makes our characters unique.

Pg. 31 - The wonderful business in Chris and Will's February 4th draft, with Simon teaching Theodore how to do math has to be restored. It's a great scene that is very chipmunk specific and also speaks volumes about Toby. See 2/4/09 draft: middle of page 31 to middle of page 32. Again, this is exactly the type of character specific moments our audience expects and returns to the theaters to see.

We can find room for this special character business by eliminating some of the repetitive beats that come later.

Pg. 37 - After Theodore tells Alvin he can go to the cool table and Alvin thanks him, we need to add, that "Alvin hugs Theodore's limp body" so we know Theodore isn't into this at all.

Pg. 38 - Small Ian dialog change: When the person hangs up on Ian, it showed more of his frustration when he used to react, "Hello?! Hello?!" His current line, "A simple "no" would have sufficed" doesn't show his frustration, which sets up his delight at seeing the newspaper event that heralds "The Chipmunks To Enter School Band Contest."

Pg. 39 - Theodore shouldn't hear Simon tell Alvin, "But you promised Theodore we'd hang out. He misses Dave and school is making him anxious." Perhaps Simon could whisper this to Alvin so Theodore doesn't hear. Also, Alvin shouldn't say, "You're not the boss of me." And Theodore shouldn't say, "Yes he is. Dave said so." Instead Alvin could say, "Can't do it today." Simon could respond, "That's what you say everyday."

Pg. 39 - Replace Ryan's line, "You better listen to 'em, Alvin. They're BMOC's - Big Munks on Campus" to something less trite, like, "Better listen to your dad, Alvin. You don't want to be grounded" followed by his laugh.

Pg. 39 - Simon shouldn't say, "No one likes a litter bug." It's a little too nerdy. Instead, when Ryan misses the garbage can with his empty milk carton, Simon could say, "Nice shot. Now I see why you need Alvin on your team." And Simon could then pick up the milk carton and throw it over his shoulder into the trash without even looking. It makes Simon more capable and less goody too shoes.

Pg. 40 - Two lines on this page make Alvin sound too egotistical. The first one, "Let's not fight in front of the fans." Please just eliminate it.

The second one, "Oh, relax. We're singing chipmunks. Who's going to beat us?" Again, the problem is that Alvin is becoming REALLY unlikeable. It works better if Alvin just quotes Ryan, which shows Ryan's continuing, misguided influence on him. "Relax. Like Ryan says, who's gonna beat singing Chipmunks?"

Pg. 41 - Again, The Chipmunks are too egotistical. We can accomplish the same sense of their being united and still be true to their characters. Instead of Theodore saying, "The boys are back!" and Simon saying, "Alvin, you were on fire!" And Alvin saying, "I need to be ready in case those 'munkettes are at the show" let's take another tack.

The Chipmunks have just seen girl chipmunks for the first time in their lives.

They're on the top of the piano, in a bit of a trance. Alvin could say, "Pink is my new favorite color." Simon might say, "Her glasses were quite fetching." And Theodore might say, "She's like a beautiful green gumdrop." Then Julie could break the trance by saying, "Guys, you need to concentrate on the music."

Pg. 42 - Toby just needs to be unable to get the words out. Please eliminate the "Long time no, see monkey see monkey do." He can say, "Um, yeah...hi...you're looking...older. Then time to go, etc.

Simon line, "smooth." Is more of an Alvin line. Give it to Alvin.

Pg. 43 - Again, Alvin's line, "That's how we ride, Doc." Makes him sound like a creep. These kinds of lines are making Alvin very unlikeable. If someone needs to say something, let Simon say something more like, "Always happy to help the school." Then Ian can say, how fondly he recalls that squeaky, false modesty.

Pg. 43 - Instead of Alvin having the line, "You could say that" let Simon say, "Unfortunately."

Pg. 45 - Instead of the Chipmunks looking smitten with the girls and the girls giving them the cold shoulder, let's just have Alvin say, "Since when did this become a competition?!"

This would eliminate, Alvin smiles suavely at Brittany, Simon peering over his glasses, Theodore making a "funny face" at Eleanor. Parenthetically, Theodore wouldn't make a "funny face" at Eleanor, he would wave shyly to her. This is more in his character.

Pg. 46 - We don't want Simon and Jeanette to be part of this Chipmunk vs. Chipette. So, instead of Simon saying, "May the best Chipmunk win." And Jeanette say, "That would be us" (which is NOT her character), let's have Jeanette drop her glasses, as in a previous draft, Simon picks them up and gives them back to her, she thanks him awkwardly, but we see the connection. She might even do that bit, where she says, "That was embarrassing" and turns to show that the bottom of her skirt is tucked into her hem.

Pg. 46-48 - The race between Alvin and Brittany. If this race is worth having at all, we have to have the real personality of the characters, not this "That munk's got spunk" and "going my way" and "snooze you lose."

These are all too glib, generic and not right for our characters. See other dialog changes below:

Pg. 46 - Eliminate Alvin's line, "That munk's got spunk." Too young and glib.

Pg. 46 - Change Alvin's line, "Going my way?" (again too cliché) to "No running in the halls." This will throw Brittany off guard and she should begin to speed walk after apologizing (until she realizes it's Alvin).

Pg. 47 - Change Brittany's line, "Amateur!" to "Oh, sorry." Before she knows it's Alvin.

Pg. 47 - Change Brittany's line, "Snooze you lose." To "Amateur!"

Pg. 47 - Change Alvin's line, In case you were wondering, the "A" is for "Available." To "In case you were wondering, A comes before B."

Pg. 48 - Slight adjustment to Alvin's line, omit the "I'm pretty sure" Instead it will read, "First, he doesn't have a heart. Second, did he tell you he put us in cages?!"

Pg. 48 - Slight adjustment to Alvin's line, omit "be that way" Instead, the line will read, "Okay, cause you were there." Then keep the rest of the line, as is.

Note: There's a lot of good character specific business and dialog in the January 26th draft (see page 49-51), please refer to it.

Pg. 49/50 - The opening of the scene in the boy's bedroom doesn't really work and some of the information is a bit repetitive. Instead, let's try something like this:

Alvin and Theodore are in the leather chair. A very weary Simon enters saying, "You know it doesn't really count if you put the dishes away before you wash them, Alvin." Alvin might say, "Thank you, Martha Stewart." Simon: "I'm just saying, I'd like a little help around here." Theo: "I'll help you, Simon." Simon: "Did you do your homework?" Theo: "Uh...well...uh." Simon: "We'll do it before school tomorrow." Then back to Simon pulling the covers and Alvin "Stop hogging" til Simon and Alvin decide to sleep in separate beds, leaving Theodore alone.

Pg. 50 - Toby agrees to let Theodore sleep in his bed too easily. It should be harder. First, Theodore asks. Toby hesitates, looks concerned. Theodore says, "Dave let me." Toby starts to soften, "Well..." He looks at Theodore's pitiful face, then reluctantly agrees, "Uh...okay."

Pg. 51 - We're cutting this scene too short. After Toby sleep talks about his missing pants, and Theodore says he didn't see them, Toby falls back to sleep. Add back the business from the 1/26/09 draft (pg 34) where Theodore crawls back under the covers, we hear a loud farting sound, we see the Chipmunk lump under the covers moving frantically, trying to escape, until Theodore finally appears, desperately sucking the fresh air. Theodore sees Toby's pants on the end of the bed and turns to a sound asleep Toby and says, "Here are your pants, Mr. Stinky" and exits.

We know that we have to use our CGI shots judiciously, but this adds very little CGI and is the kind of memorable Chipmunk moments our audience loves.

Pg. 51 - Since we've begun the split of the brothers, Alvin, Simon and Theodore shouldn't be wrapping gifts together. Instead, they should be in separate places. Theodore is helping wrap gifts. Julie would thank him and then look over to Eleanor and (wanting to end the rancor) say, "Eleanor, why don't you give Theodore a hand." Eleanor knows Ian doesn't want her fraternizing with the enemy, but likes Theodore and would say, "Uh...okay."

Omit Simon talking to Alvin. Again, we want to feel the breakup. Instead, have Becca (rather than Jeanette and Eleanor) with Brittany, and have Becca say, "I think Alvin's looking at you." Then have Brittany say, (not Jeanette, because she's not a game player) "If I look over and he sees me, then I'll be the one who's looking over." Becca (not Eleanor) would then say, "Good point." This scene is right for Becca and Brittany, but absolutely not in character for either Eleanor or Jeanette.

Then go to Simon playing chess against himself. We'll use some of the dialog from the 1/26/09 draft (pg 38), "You telegraphed that move, my sorry little friend." Simon then jumps to the other side, "I eat sorry for breakfast." Jeanette comes up, "Might want to move that bishop." Simon thanks her. Jeanette says, "I'm not supposed to talk to you, bye."

Then to the voice over the P.A. system asking Alvin to report to the coach's office.

Then a piece of trash upends Simon's chess board. Simon throws it in the trash then back to the current script (page 53) where Jeremy Smith comes up to Simon and asks him to be Litter monitor.

Pg. 53 - I don't know why Simon would ask to wear a sash? It seems funnier, if he doesn't willingly ask to wear something, but rather is told by Jeremy that he must wear the "official" item (which is truly embarrassing). Simon knows this will look odd, but reasons that it's for a good cause, so what the heck.

Pg. 54 - We didn't know why Eleanor and Jeanette would come over to help Theodore here, so we accomplished it earlier. Given that change, Eleanor wouldn't now say, "Need a hand or two?" It would now be Theodore and Eleanor pin down the unruly paper and tape it tight.

Pg. 54 - Change Theodore's line, as he looks to Eleanor, "You look, I mean, it looks pretty." "Lovely" isn't a Theodore word.

Pg. 54 - We can have a little more fun with Simon's dialog. When he sees the tidy table, let him say something like, "Excellent job, guys. Gold stars all around."

Simon's next line, sounds like a power nerd, "How about you pick that up right now and we'll just call this a warning." Let's try something less powertripish, "You guys probably aren't aware of the wrapper on the ground, so let's just call this a warning."

Bottom of page 54/55 - I don't think we need this beat with Becca, Valentina, Brittany and Simon. Ryan and the guys are already laughing at Simon and Alvin could come in on this. This is one of those scenes that tells us very little and reveals nothing new about the characters. It's 8 CGI shots that can be better spent elsewhere.

Pg. 55 - Eliminate Alvin's "Wassup, boys? And Ryan's, "A lot." Just start with Alvin's, "Guess who just found out he's on the football team?"

Pg. 57 - Slight change to Ryan's dialog: "We're messin' with you!" Instead of "We punked you!"

Pg. 57 - Change Simon's line to Alvin, "But...Alvin, how can you be friends with these guys." To, "Alvin?! You knew about this?"

Pg. 57 - Alvin shouldn't "laugh along." Too mean. Show Alvin smiling uncomfortably, but really torn. He doesn't laugh with Ryan and the guys, but he doesn't stick up for Simon either.

Pg. 58 - This scene creates a wonderful opportunity that we are not taking advantage of. After Alvin says, "Okay. I'm a jerk. Let's just get it out there. A big, fat popularity hog. We cool?"

Simon jumps on Alvin and the two of them disappear into the garbage. The garbage flies in the air. After a moment, the two resurface. Simon says, "Look, Alvin, let's just put this behind us, for Theodore's sake. You know he's hanging by a thread. Rehearsal's at 4 o'clock." Alvin hesitates, "Yeah, about that...I can't make the rehearsal."

Simon jumps on Alvin again, and they disappear into the garbage. Garbage flies everywhere as we hear sounds of the boys fighting. Just then we hear Theodore's voice, "Simon? Alvin?" Simon and Alvin peak their garbage littered heads out of the trash. Theodore asks, "Everything alright?" Simon quickly, "Absolutely, Theodore." Alvin adds, "Yeah." They put their arms around one another awkwardly and smile as sincerely as possible. Theodore looks relieved and exits. As soon as he's gone, Simon turns to Alvin, "Do not miss that show!" Alvin says, "I'll be back in plenty of time."

Pg. 60 - Please replace Ian's "Those Chipmunks are about to lick my shoes." Do we need Ian to say anything like this?

Pg. 60 - Change Brittany's line, "This is it, girls!" to "Can you believe it, guys?!"

Pg. 63 - Alvin's line, "Oh yeah, Whose the munk?! I'm the munk!" Again, too egotistical. This type of dialog is making Alvin too much of a jerk. Just have him say, "Oh yeah!" and give a big smile as he's carried off.

Pg. 64 - Simon wouldn't say, "So, how about those Chipettes." He's devastated. Let Theodore go first and say something very heartfelt. Then have Theodore get choked up and Simon takes the mic and just says something like, "So, look, we know it's our turn, but the thing is, Alvin isn't here. So we won't be performing tonight."

It's too weak for Simon to say, "without Alvin, we're just not the Chipmunks."

Pg. 64 - Change the last word in Ian's speech to "success" instead of "happiness." Ian is all about success. He could care less about Happy.

Pg. 65 - Small omission from Dr. Rubin's speech, omit, "...the chipmunks forfeit" The line should read, "Well, I guess that means the Chipettes will represent West Eastman!"

Pg. 65/6 - Omit the scene as written where Alvin comes home and talks to Simon and sees Toby. This will need to be reworked.

That's all for now. We'll tackle 65 to the end on Tuesday.

Ross and Janice.

\*\*\*\*\*

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steve waterman &lt;waterent@gmail.com&gt;

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**chipmunk script**

5 messages

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**Bagdasarian@aol.com <Bagdasarian@aol.com>**  
To: waterent@gmail.com

Sun, Feb 8, 2009 at 11:09 AM

Steve,

A little FYI, we received the second half of the script that Betty's worked on with Chris and Will. Once again, it is missing the character specific personalities and the emotional weight that makes our movies unique. Karen agrees with that. We are waiting to hear from Elizabeth and set up another meeting with everyone tomorrow. But this has been a recurring problem, whether from Jon Vitti, the writer twosome of Aibel and his partner, Betty's cut and paste or now, Chris and Will. Each of them, especially in the second half, has lost the unique characters of The Chipmunks and Chipettes as well as any real emotion to the story. We have said to Karen that these drafts will destroy our franchise and that we can't approve of them as they exist. Since no one else seems to know who our characters are, we don't know why they don't put us in a room with these guys for a few days and let us do this right. We also said that this back and forth has never gotten us a second half that works and to continue this same model is reckless especially when we're supposed to begin filming in two weeks.

Karen is going to speak to Betty and Elizabeth about having us work with Chris and Will. The problem has been that Elizabeth does not seem to value Janice's writing. But all agree, that no one else has been able to capture the unique personality or the heart of the characters in the second half.

I'm afraid that without that support from Elizabeth, acknowledging Janice's writing and asking for her to employ it, we will end up with a story and script we can't approve. I hope that this gets resolved tomorrow, but I don't know why Elizabeth and or Betty have held on to an approach that is clearly not working.

Ross

\*\*\*\*\*

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**steve waterman <waterent@gmail.com>**  
To: Bagdasarian@aol.com

Sun, Feb 8, 2009 at 11:55 PM

- we have to get Karen to speak up not just to you and Janice but to scream it loud enough for Beth to hear it  
 [Quoted text hidden]

**Bagdasarian@aol.com <Bagdasarian@aol.com>**  
**To:** waterent@gmail.com

Mon, Feb 9, 2009 at 7:07 AM

I spoke to Karen yesterday. She's arranged for Janice and I to meet with Betty and the two other writers today, without Elizabeth or Erin. We have reworked the first 65 pages. If everyone agrees with our changes and they go into the script today, we'll be good. It's ridiculous that they are trying to treat these as "Producer notes" as it would be considered "writing" by any other measure, but at this point we're just trying to make sure the script is right for our characters. I'll let you know how it goes.

On another note, some friends of ours, Bill Guthy and Victoria Jackson flew with Ben Stiller on their private plane a week ago down to the Palm Springs film festival. They spoke about The Chipmunk movie and he said how much he and his family loved it. Currently, the script only has about a days work for David Seville. Could you call Stuart and see if Ben would have any interest in playing that part. It wouldn't be much for this one, but it would set him up as Dave for the third. I have no idea what the studio's reaction would be or whether Jason wants to do it (He'll also see a copy later today). But I'd love to know if Ben would be interested, if not this time, perhaps the next.

Ross

\*\*\*\*\*

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**waterent@gmail.com <waterent@gmail.com>**  
**Reply-To:** waterent@gmail.com  
**To:** Bagdasarian@aol.com

Mon, Feb 9, 2009 at 8:51 AM

Best news your meeting without executives and yes will call stuart at ten

Sent from my Verizon Wireless BlackBerry

**From:** Bagdasarian@aol.com  
**Date:** Mon, 9 Feb 2009 10:07:51 EST  
**To:** <[waterent@gmail.com](mailto:waterent@gmail.com)>  
**Subject:** Re: chipmunk script

[Quoted text hidden]

**steve waterman <[waterent@gmail.com](mailto:waterent@gmail.com)>**  
**To:** Bagdasarian@aol.com

Mon, Feb 9, 2009 at 11:30 AM

Left word for Stuart

[Quoted text hidden]

## **EXHIBIT 17**

## Re: Alvin and the Chipmunks: The Squeakquel - Writing Credits

---

**From:**

steve waterman <waterent@gmail.com>

**To:**

bagdasarian@aol.com

**Date:**

Sat, 09 May 2009 14:20:01 -0700

---

Great I am glad they have spoken. I am sure they will be surprised by the increase in your position. I will venture that Steve Plum no longer calls me his friend.

I am up at my house the fire seems to be well under control but the area is still under mandatory evacuation unless you happen to know the police man or get one that is open to your returning to your home. I ran through the neighborhood and your house is fine as I could see from mountain.

Look forward to hearing the next steps

On Fri, May 8, 2009 at 7:30 PM, <[bagdasarian@aol.com](mailto:bagdasarian@aol.com)> wrote:

Thanks Steve. We'll forward the notice to Larry Shire. By the way, Larry has spoken w/Steve Plum and planned to speak with him a second time later this afternoon. Once we get an update from Larry, we'll fill you in.

Chris

-----Original Message-----

From: steve waterman <[waterent@gmail.com](mailto:waterent@gmail.com)>  
To: [bagdasarian@aol.com](mailto:bagdasarian@aol.com) <[bagdasarian@aol.com](mailto:bagdasarian@aol.com)>  
Sent: Fri, 8 May 2009 5:17 pm  
Subject: Fwd: Alvin and the Chipmunks: The Squeakquel - Writing Credits

This is very disappointing

----- Forwarded message -----

From: Nancy Niederman <[Nancy.Niederman@fox.com](mailto:Nancy.Niederman@fox.com)>  
Date: Fri, May 8, 2009 at 4:20 PM  
Subject: Alvin and the Chipmunks: The Squeakquel - Writing Credits  
To: [Bagdasarian@aol.com](mailto:Bagdasarian@aol.com)  
Cc: steve waterman <[waterent@gmail.com](mailto:waterent@gmail.com)>

---

For your information, I am attaching a copy of the Notice of Tentative Writing Credits which was submitted to the WGA in connection with the above-referenced project.

Regards,  
Nancy

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Shopping for Mom? [Save yourself a little time and money on AOL Shopping.](#)

## **EXHIBIT 18**

15 VIDEOTAPED DEPOSITION OF ROSS BAGDASARIAN  
16 Los Angeles, California  
17 Thursday, August 22, 2013

21       Reported by:  
22       SHANDA GABRIEL  
23       CSR No. 10094  
24       Job No. 1719233  
25       Pages 1 - 381

1                   THE WITNESS: I have no opinion about that. 18:26:40  
2                   BY MR. KARASIK: 18:26:40  
3                   Q. One way or the other? 18:26:43  
4                   A. One way or the other. 18:26:44  
5                   Q. I want to see if you have any belief that 18:26:45  
6                   the decision to co-finance was trying to treat you 18:26:47  
7                   differently than maybe some other person who was a 18:26:51  
8                   rights holder who had brought a property to Fox. 18:26:54  
9                   Is that -- do you have any contention along 18:26:56  
10                  those lines? 18:26:58  
11                  A. As far as the co-financing -- 18:26:58  
12                  Q. That's right. 18:27:04  
13                  A. -- in and of itself being a concern? 18:27:04  
14                  Q. Right. 18:27:07  
15                  A. I -- I don't know what the legal arguments 18:27:07  
16                  are but -- but the co-financing alone, as long as I 18:27:09  
17                  was being paid according to my contract with Fox, 18:27:12  
18                  then -- then that would seem to me that the 18:27:19  
19                  co-financing in and of itself is not the issue. 18:27:20  
20                  Q. All right. As long as you are paid in 18:27:23  
21                  accordance with your agreement with Fox you see no 18:27:25  
22                  problem with the co-financing decision? 18:27:28  
23                  A. Well, you know, all I can say is that 18:27:31  
24                  co-financing alone, as long as my agreement -- you 18:27:33  
25                  know, I'm not worse off because of what my agreement 18:27:35

1 STATE OF CALIFORNIA )  
2 ) ss.  
3 COUNTY OF LOS ANGELES )

4 I, Shanda Gabriel, Certified Shorthand  
5 Reporter, Certificate No. 10094, for the State of  
6 California, hereby certify:

7 I am the deposition officer that  
8 stenographically recorded the testimony in the  
9 foregoing deposition;

10 Prior to being examined the witness was by  
11 me first duly sworn;

12 The foregoing transcript is a true record  
13 of the testimony given.

14 Before completion of the deposition, review  
15 of the transcript [X] was [] was not requested. If  
16 requested, any changes made by the deponent (and  
17 provided to the reporter) during the period allowed  
18 are appended hereto.

19  
20 Dated September 5, 2013.  
21

22 \_\_\_\_\_  
23 Shanda Gabriel  
24 CSR 10094  
25

Page 381

## **PROOF OF SERVICE**

I, Louis A. Karasik, declare:

I am employed in the County of Los Angeles, State of California. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On June 6, 2014, I served the document(s) described as follows:  
**DECLARATION OF CASONDRA K. RUGA IN SUPPORT DEFENDANT TWENTIETH CENTURY FOX FILM CORPORATION'S MOTION FOR ATTORNEYS' FEES AND COSTS** on the interested parties in this action:

- BY MAIL: I am "readily familiar" with this firm's practice for the collection and the processing of correspondence for mailing with the United States Postal Service. In the ordinary course of business, the correspondence would be deposited with the United States Postal Service at 333 South Hope Street, Los Angeles, CA 90071 with postage thereon fully prepaid the same day on which the correspondence was placed for collection and mailing at the firm. Following ordinary business practices, I placed for collection and mailing with the United States Postal Service such envelope at Alston & Bird LLP, 333 South Hope Street, Los Angeles, CA 90071.
- BY ELECTRONIC SERVICE-CASE ANYWHERE: I transmitted via the internet, a true copy of the above-entitled document(s) to Case Anywhere at [www.caseanywhere.com](http://www.caseanywhere.com). I caused the above-entitled document(s) to be sent to the recipients on the service list as maintained by Case Anywhere in this action.
- BY ELECTRONIC MAIL TRANSMISSION: On this date, I transmitted the above-mentioned document by electronic mail transmission with attachment to the parties at the electronic mail transmission address set forth on the attached service list.
- [Federal] I declare under penalty of perjury that the above is true and correct.

Executed on June 6, 2014, at Los Angeles, California.

/s/ Louis A. Karasik